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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
The Merger of MCI Communications Corporation and British Telecommunications plc	)))	GN Docket No. 96-245

COMMENTS OF WORLDCOM, INC.

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SUMMARY

WorldCom, Inc. ("WorldCom") presents its comments on the "Applications and Notification" ("Application") submitted by MCI Communications Corporation ("MCI") and British Telecommunications plc ("BT") (together, "BT/MCI") seeking Commission approval to transfer control of MCI's various authorizations to BT.

WorldCom does not oppose FCC approval of this merger, but WorldCom does urge the FCC to condition its approval on appropriate regulatory measures being implemented in the U.K. and classify the merged entity as a dominant carrier on the U.S.-U.K. route. WorldCom believes that appropriate conditions are necessary notwithstanding the substantial pro-competitive steps implemented by the U.K. Department of Trade and Industry ("DTI") and Office of Telecommunications ("OFTEL") to date. BT continues to maintain certain advantages over its competitors in the U.K. market, especially with respect to its control of the local exchange bottleneck. It is therefore critical that the U.K. implement a number of measures similar to those adopted in the United States to protect long distance companies from local telephone company leveraging of local bottleneck facilities. The most important of these elements is access to unbundled local loop elements. WorldCom believes that access to unbundled local loop elements *is* absolutely critical to WorldCom's ability to compete in the United Kingdom.

These comments also focus on BT's control over bottleneck access to submarine cable capacity. BT has an incentive to deny or limit access by competing carriers to such capacity because, absent timely and non-discriminatory access to the capacity, competing carriers may be unable to satisfy existing customers or meet the demands of new customers. WorldCom therefore requests that the FCC impose conditions on and maintain vigorous

oversight of BT to ensure that unaffiliated carriers have access to submarine cable capacity, adequate backhaul facilities and digital access cross-connect switches on a cost-based nondiscriminatory basis.

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Corporation and British	)	
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COMMENTS OF WORLDCOM, INC.

I. INTRODUCTION AND EXECUTIVE SUMMARY

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby comments on the "Applications and Notification" ("Application") submitted by MCI Communications Corporation ("MCI") and British Telecommunications plc ("BT") (together, "BT/MCI") seeking Commission approval to transfer control of MCI's various authorizations to BT. Through its wholly-owned subsidiaries, WorldCom International, Inc. ("WorldCom UK"), MFS Communications Ltd. ("MFS UK"), and The Public IP Exchange Limited, WorldCom provides integrated local, long distance, international and Internet services in the U.K. Through its subsidiaries, WorldCom also is licensed to provide a full range of facilities-based domestic and international services in the United States and the United Kingdom.[1]

[1] On December 31, 1996, WorldCom and MFS Communications Company, Inc. ("MFSCC") merged. As a result, MFSCC and its subsidiaries, including MFS International, Inc., a Section 214 licensee ("MFSI"), are now wholly-owned subsidiaries of WorldCom. MFS Communications Ltd. is a wholly-owned subsidiary of MFSI. WorldCom's U.K. authority includes "code powers" that entitle it to utilize public rights of way to construct its own infrastructure.

WorldCom does not oppose FCC approval of this merger, but WorldCom urges the FCC to condition its approval on appropriate regulatory actions in the U.K. and classify the merged entity as a dominant carrier on the U.S.-U.K. route. Appropriate conditions are essential to preclude BT from leveraging its control of bottleneck facilities in the United Kingdom to discriminate against competing carriers providing service in the U.K.-international services market. In addition, WorldCom is concerned that FCC approval of the merger would violate Section 310(a) of the Communications Act.[2]

WorldCom believes that appropriate conditions and effective enforcement of such conditions are necessary notwithstanding the substantial pro-competitive steps implemented by the U.K. Department of Trade and Industry ("DTI") and Office of Telecommunications ("OFTEL") to date. As a result of OFTEL's efforts, the United Kingdom is one of the most open and competitive markets in the world. There are currently no legal restrictions on the ability of U.S. carriers to provide telecommunications services in the United Kingdom. For the most part, the U.K. interconnection regime and system of competitive safeguards appear to provide adequate protection to U.S. carriers providing service in the United Kingdom.

Despite this progress, however, BT continues to maintain certain advantages over its competitors in the U.K. market, especially with respect to BT's control of the local exchange bottleneck. It is therefore critical that the U.K. implement a number of measures similar to those adopted in the United States to protect customers of U.S.-owned long distance companies from local telephone company leveraging of local bottleneck facilities. Such requirements as local

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[2] 47 U.S.C. §310(a) (1995).

loop unbundling, full number portability, and equal access[3] would significantly reduce BT's advantages resulting from its control of the local exchange. WorldCom is mindful of OFTEL's concerns that some of these measures may reduce the incentive of carriers to construct alternative local infrastructure, contrary to OFTEL's policy goal of encouraging such construction. WorldCom understands OFTEL's interest in encouraging the development of competing local loops. WorldCom believes, however, that access to unbundled local loop elements *is* absolutely critical to WorldCom's ability to compete in the United Kingdom. A substantial portion of these comments is therefore focussed on the need to require BT to unbundle its local loops.

These comments also focus on BT's control over bottleneck access to submarine cable capacity. Last December, WorldCom UK and MFS UK received licenses to provide international facilities-based services out of the United Kingdom. These licenses would be devalued, however, if WorldCom cannot obtain from BT reasonably-priced capacity on existing submarine cables (TAT 12/13 in particular) over which to route international traffic. BT has an incentive to deny or limit access by competing carriers to such capacity because, absent timely and non-discriminatory access to the capacity, competing carriers may be unable to satisfy existing customers or meet the demands of new customers. WorldCom therefore requests that the FCC impose conditions on and maintain vigorous oversight of BT to ensure that unaffiliated

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[3] WorldCom is encouraged by OFTEL's progress in implementing geographic number portability. WorldCom urges OFTEL to continue moving quickly to implement non-geographic and "Freephone" number portability. OFTEL has recognized that introduction of such portability is a high priority in the formation of a truly competitive market. *See* OFTEL Statement, *The National Numbering Scheme*, at ¶81.

carriers have access to submarine cable capacity, adequate backhaul facilities and digital access cross-connect switches on a cost-based nondiscriminatory basis.

WorldCom also requests that the FCC work with OFTEL to ensure that competitive carriers can obtain access to unbundled local loop elements and submarine cable capacity on reasonable and nondiscriminatory rates, terms and conditions. In this regard, WorldCom is cautiously optimistic that the fair trading condition recently inserted into BT's license will restrain the ability of BT to leverage its market power to the detriment of competing carriers. While it has not yet been invoked, this condition would appear to enable OFTEL to take swift enforcement action if BT distorts competition. Given that this enforcement power has only recently been confirmed, however, WorldCom urges the FCC to maintain oversight of BT's willingness to comply with local loop unbundling and access to cable capacity until the effectiveness of OFTEL's new power in protecting U.S. carriers is proved. WorldCom understands that OFTEL may be contemplating some relaxation of its oversight activities now that the international services duopoly has ended, and WorldCom is therefore particularly concerned that there be clear procedures in place for invoking the fair trade condition on an expedited basis in the event that anticompetitive activities occur.

II. DISCUSSION

A. The Standard of Review

1. The Public Interest Standard

The Commission must review the Application to determine whether "the public interest, convenience and necessity will be served by the transfer of control."[4] The public interest standard requires the Commission to take all relevant issues into account, including the impact upon competition in the U.S. international services market.[5] Under the FCC's existing policy, the Commission must determine whether the U.K. offers U.S. carriers effective competitive opportunities ("ECO") to compete in the U.K. market and whether the public interest otherwise would be served by grant of the applications.[6] The FCC also has substantial discretion to impose conditions in Section 214 authorizations, or upon the transfer of a Section 214 authorization, to promote the public interest.[7]

Close scrutiny is particularly appropriate for such a significant transaction as BT's proposed acquisition of MCI. Under the merger, the world's third and fifth largest international carriers would merge,[8] and BT would become the second largest long distance and international

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[4] *See* 47 U.S.C. § 214(a).

[5] *E.g., FCC v. RCA Communications, Inc.,* 346 U.S. 86, 94 (1953); *FCC v. Pottsville Broadcasting Co.,* 309 U.S. 134, 138 (1940).

[6] *See Market Entry and Regulation of Foreign-Affiliated Entities,* 11 FCC Rcd 3873, 3979 (1995).

[7] 47 U.S.C. §214(c); *see e.g., Atlantic Tele-Network, Inc. v. FCC,* 59 F.3d 1384 (D.C. Cir. 1995).

[8] *See TeleGeography 1995: Global Telecommunications Traffic Statistics &*
(continued...)

carrier in the United States. The Commission previously recognized that BT's initial acquisition of a 20% interest in MCI, and the combined 20% interest purchased by Deutsche Telekom and France Telecom in Sprint, raised unique public interest concerns.[9] Given the size of the resulting company and BT's continued dominance in the U.K.'s local telecommunications market, the MCI acquisition transcends either of those previous transactions and thereby warrants close scrutiny under a broad public interest standard.

2. BT's Dominant Carrier Status

In addressing BT/MCI's application, the Commission must consider BT's indisputable dominance in the U.K. local market. According to BT's own recent filing with the Securities and Exchange Commission, BT enjoyed a 93% market share for local telephony in the first quarter of 1996.[10] BT and MCI themselves concede that two-thirds of U.K. local residential subscribers do not have the option of subscribing to a competing local provider. (Application at 28.) BT is currently the only ubiquitous provider of local exchange service. Moreover, even in the U.K.-international market, where BT's market share is lower, BT maintains control over bottleneck access to submarine cable facilities. Neither the recent decisions of the U.K. DTI to grant

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(...continued)
Commentary (G. Staple, Editor) at 88 (Table 2) (listing MCI as third largest and BT as fifth largest international carriers based upon outgoing voice minutes in 1994).

[9] *See MCI Communications Corp. and British Telecommunications plc*, 9 FCC Rcd 3960, 3967 (1994); *Sprint Corporation*, 11 FCC Rcd 1850, 1856 (1996).

[10] British Telecommunications, plc, Securities-Exchange Commission, Form 20-F, at 35.

additional international facilities-based licenses to new entrants,[11] nor OFTEL's assumption of greater regulatory powers necessarily eliminates BT's ability to leverage its control over bottleneck facilities.[12] While the U.K. regulatory scheme and the pro-competitive measures taken by DTI and OFTEL may reduce the amount of regulation needed to guard against anti-competitive behavior, they do not eliminate the need for continued vigilance by the Commission to ensure the continued competitiveness of the U.S. international services market.

3. Risk of Anticompetitive Leveraging Activities

By increasing its ownership interest in MCI from 20% to 100%, BT will have more incentive and a greater ability to leverage its market power in the U.K. into the U.S. long distance and international markets and on the U.S.-U.K. route. BT will be able to take unique advantage of the "substantial" pent-up demand for full-service, end-to-end offerings identified in the Application (at 14) as a target market for the merged BT/MCI companies, by routing traffic over MCI's local and long distance network in the United States, BT's or MCI's international facilities across the Atlantic, and BT's long distance and local networks in the U.K. BT can obtain a significant advantage if competitors do not have the same ability to provide end-to-end

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[11] It may take years before competition in the U.K. ends BT's *de facto* dominance of the U.K. market. *See* Letter from A. Epstein, Counsel for MCI, to R. Rosen, Department of Justice (Feb. 7, 1994) (opposing MFJ waiver for Ameritech's Customers First Plan by noting that "[i]t took more than a decade to bring about effective competition in most segments of the interexchange market, and it is likely to take at least that long to realize effective competition in the local exchange").

[12] *See* Reply Comments of the Department of Justice, IB Docket No. 95-22, filed May 12, 1995, at 17, quoted with approval in MCI Opposition at 3 ("[f]oreign regulation normally should not be considered a sufficient alternative to protect U.S. consumers in the absence of any meaningful facilities-based competition, however effective that regulation may be represented to be.").

services to customers. Where BT can restrict this ability by restricting access to key U.K. aspects of its global network -- by imposing discriminatory rates, terms, or conditions; by providing deficient interconnection arrangements -- or by offering only bundled local loop services or facilities, BT can prevent competitors from competing with it on equal footing. For example, BT currently provides international Centrex service only as a bundled offering with domestic Centrex services. Until OFTEL requires BT to unbundle international from domestic Centrex and Centrex-type services, BT will have a significant ability to undermine international and long distance competition through tying arrangements.

At present, OFTEL's regulations and policies adequately constrain BT's ability to impose unreasonable or discriminatory rates on competitors. WorldCom is not currently in a position, however, to determine whether the new interconnection regime proposed by OFTEL for 1997 would allow BT greater flexibility to impose unreasonable or discriminatory interconnection rates and therefore distort competition in the U.K. international market.[13]

The FCC has long recognized the potential for market distortion by companies with control over bottleneck facilities. Although BT in general has cooperated with WorldCom in a number of areas, WorldCom is concerned that, absent the leverage provided by the regulatory review of BT's planned takeover of MCI, BT will not be as willing to cooperate with competing carriers, such as WorldCom, that are dependent on BT for essential facilities and services. Accordingly, while the Commission should not deny BT's entry into the U.S. market, it should impose conditions to govern BT's activities once BT enters the U.S. market and after the

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[13] *See OFTEL Consultative Documents*, Network Charges from 1997.

leverage created by the proposed merger is no longer a factor. Such conditions would ensure BT's continued compliance with requirements intended to prevent BT from abusing its continued position as the provider of bottleneck facilities and services in the United Kingdom. WorldCom urges the FCC to work with OFTEL to ensure that BT's actions are limited accordingly, and to maintain continuing, vigilant oversight over BT's use of bottleneck facilities until such time as either competition or enhanced regulation by OFTEL eliminates the possibility that competing carriers will face unfair competition from BT in the market for U.K. international services.

The conditions placed on the approval of the BT/MCI merger should be accompanied by a clear procedure under which competitors can obtain redress for BT's failure to comply. The importance of such a procedure was demonstrated recently when AT&T failed to live up to voluntary commitments it made with respect to submarine cable access in return for being found non-dominant for international services.[14] Such an enforcement mechanism should consist of a means of identifying a violation as well as a means of remedying it. Section 208 of the Commission's rules currently governs the filing of complaints against carriers for violations of the Communications Act.[15] WorldCom would be willing to work with the Commission to develop fast, efficient, and effective enforcement mechanisms sufficient to deter or penalize companies that violate conditions in their authorizations.

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[14] *See, e.g., MCI Communications Corporation and Sprint Communications Company, L.P., Ex Parte Letters,* filed December 4, 1996 and January 23, 1997.

[15] 47 U.S.C. §208.

B. Access to Bottleneck Facilities

In order to reduce BT's ability to engage in anticompetitive leveraging activities and thereby undermine the ability of U.S. carriers to compete in the U.K. market, the FCC should coordinate with the U.K. Government to implement two policies which are important to fair and effective competition in the international and long distance markets, but which the U.K. Government has not actively pursued. These policies include unbundling of BT's local loop and ensuring access to submarine cables, backhaul facilities and digital access cross-connect switches.

1. Unbundling of Local Loop

WorldCom urges the FCC to condition its approval of the BT/MCI merger on the full unbundling of BT's local loops in the United Kingdom. WorldCom's business requires that, at least in the short term while BT has a virtual monopoly on local services, it have access to unbundled local exchange network elements on a reasonable, nondiscriminatory basis. As additional local infrastructure is built, the need for unbundled elements could be reduced. Requiring BT to unbundle its local loop will help to relieve the anticompetitive situation in which local exchange competitors must obtain more local network elements than necessary to provide competitive local services on an economical basis.

An "unbundled loop" is the common line element of switched access services, which can be defined as a "line between the premises of an end user and the local exchange." In engineering terms, the unbundled loop typically is a voice-grade analog transmission path between the local exchange wire center and the demarcation point at the customer's premises. This transmission path historically and most commonly has been provided through the use of a dedicated pair of copper wires for each line, although in recent years a number of other, more sophisticated loop technologies have been deployed.[16]

WorldCom requests that the local loop (or common line) be unbundled from any and all other elements of an incumbent carrier's services. This will meet the most immediate marketplace needs of competitive telecommunications providers, thereby providing substantial and rapid benefits to the end user public in the form of greater competition. Thus, WorldCom seeks the ability to access BT's ubiquitous transmission paths to customers' premises within the local exchange, on an unbundled basis. The provision of such unbundled loops applies to all types of loop facilities employed by BT.

Unbundled local loops are especially important for new competing carriers to compete efficiently and effectively with BT in the fast-growing market of enhanced telecommunications services, such as Internet-related telecommunications applications, which are driving greater loop construction and capacity utilization. The Internet is one of the most important developments in the communications industry in decades. The unprecedented rapid development of the Internet, along with Internet-related technologies, products and services (especially intranet and extranet applications), is expected to continue to stimulate accelerated growth in demand for communications bandwidth.[17]

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[16] The newer technologies often are referred to as "pair gain" techniques because these technologies permit more than one loop to be provided per pair of copper wire.

[17] WorldCom believes that Internet Protocol ("IP") Packet switching will, over time, replace larger portions of the circuit switched voice network as the primary vehicle for business communications, due to the efficient use of bandwidth and to the significantly lower transmission costs associated with IP Packet switching. The amount of data transmitted over the (continued...)

There are no technical obstacles to the unbundling of local loops. The local loop historically has consisted of a dedicated pair of copper wires for each subscriber line, but, in recent years, many local loops have been provided using "pair gain" systems that are able to multiplex many transmission circuits onto a smaller number of physical transmission facilities. Unbundling, which has been occurring in the U.S. for nearly five years, is feasible without regard to whether the local loop is provided by dedicated copper wires or by one of the several pair gain technologies currently in use.

Any competitors to BT that do not construct their own infrastructure currently are required to purchase from BT bundled private leased line services to reach customer premises. Private leased lines provide a transmission function similar to the local loop, but these lines commonly are bundled with additional functions and services -- including special circuit engineering and conditioning, which competitors neither want nor need -- that not only increase competitors' costs but also delay the provisioning of circuits. Also, the local network in the United Kingdom actually consists of two dedicated loops, and, as a result, a carrier requesting a leased line must incur twice the cost.

Even if BT did agree to unbundle loops, non-dominant competitors could not, as a practical matter, make use of such unbundled loops unless they were priced on a rational and

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[17](...continued)
Internet backbone has grown very rapidly as a result of expanded Internet use and the increasing complexity of information delivered via the Internet. The availability and cost-efficient provisioning of local loop bandwidth is the greatest single barrier to Internet development. WorldCom believes that its ability to provide end-to-end high capacity bandwidth, unimpeded by a bottleneck at any point along the path, uniquely positions WorldCom to provide superior, business-oriented Internet-related services.

cost-determined basis. The U.K. should develop sophisticated cost studies in order to ensure that a correct, efficient and competitive price is developed for the critical pricing of unbundled local loops—pricing which must encourage the use of the loops without undermining OFTEL's policy concern regarding the creation of alternative networks.

WorldCom's experience in the U.S. confirms that the availability of unbundled local loop elements is essential to meaningful and widespread local competition. In the United States, unbundled loops have been the centerpiece of both federal and state interconnection frameworks. To this end, mandated unbundling of the local loop will enable competing carriers that have been authorized to provide telecommunications services to obtain unbundled access to these bottleneck facilities for use in originating and/or terminating traffic. Such unbundled access will extend the multiple, well-recognized benefits of competition to virtually all end users without requiring the costly and inefficient duplication of loop facilities. The inability of prospective entrants to purchase unbundled and cost-based access to the local loop currently impedes the development of competition. Accordingly, to complement its pro-competitive initiatives, the U.K. should adopt rules requiring BT to make available reasonably-priced unbundled loops to other authorized competitive carriers and to comply with uniform minimum technical criteria so that both BT and new entrants can be assured of compatibility between their respective networks.

Adoption of the measures proposed by WorldCom will increase carrier choice for both residential and business customers, reduce the ability of BT to inhibit competition, and heighten competition in the provision of long distance and international access services. The creation of additional competitive opportunities for new entrants will provide the impetus for further expansion of private investment in telecommunications infrastructure, and for the deployment of state-of-the-art technologies that will enable the delivery of innovative applications and enhanced services, resulting in further economic growth and consumer benefits.

2. Access to Submarine Cables, Backhaul Facilities, and Digital Access Cross-Connect Switches

WorldCom is also concerned about BT's position as the provider of bottleneck services related to international submarine cable capacity. BT currently controls access to the vast majority of submarine cable stations, and holds a large percentage of unactivated submarine cable capacity. Moreover, BT's position as cable construction contractor, system operator, and system administrator, as well as service provider, gives it the opportunity to discriminate on three levels: IRU pricing; charges for construction and operating costs to the cable system owners that are payable to itself; and the potential to fold domestic network costs into costs for terrestrial backhaul and cable station facilities (which are then paid by all cable consortia members). This position provides BT with both the incentive and the means to deny or limit U.S. carrier access to international capacity out of the U.K.

a. Access to Cable Capacity and Backhaul Facilities

BT can effectively deny other facilities-based carriers capacity in common carrier submarine cables. As the Commission knows, where common carrier cables are closed to new ownership, ownership capacity in such cables may only be purchased on an "IRU" basis using capacity reassigned by a current half-circuit owner in correspondence with a foreign-end owner of capacity landing in the foreign country. Such IRU capacity should be available on a nondiscriminatory basis under equal terms and conditions for new entrants to the telecommunications market. However, in the United States, WorldCom has had substantial difficulty in obtaining cable capacity and related terrestrial backhaul facilities from AT&T in order to meet customer requirements in a timely fashion. Even where it is not denied capacity, it is often offered capacity at non-competitive prices.

While WorldCom wishes to stress that it has not experienced with BT the same delaying tactics and discriminatory pricing that it experienced with AT&T, it is essential that the Commission ensure that BT be required to ensure the sale of capacity to new entrants on a timely and competitively-priced basis. The U.K. government's grant of 43 International Facilities Licenses is virtually meaningless if the new licensees are not able to obtain international capacity. WorldCom believes that it is important that OFTEL regulate BT accordingly.

BT should not be permitted to "warehouse" cable capacity purportedly for meeting future requirements but in fact to preclude its use by new entrants. BT's ability to obtain such capacity is an historical artifact from the time when large common carrier cable facilities were planned and intended to be used by large, usually monopoly, international service providers. Since they did not expect to sell to competing carriers, these providers took original ownership capacity in conjunction with large foreign correspondents. The introduction of competition has led to the current situation, in which smaller carriers seek half circuits to correspond with foreign carriers, but the capacity is held by the original owner, who is not necessarily willing to sell it at reasonable or nondiscriminatory prices or on a timely bases. WorldCom notes that original ownership capacity in TAT 12/13 has recently sold out, leaving the acquisition of IRUs from existing capacity owners as the only means of obtaining capacity in that cable system. Because of its special position as the largest owner and operator-manager of most common carrier cables landing in the U.K., BT must be subject to appropriate rules which prohibit BT from warehousing capacity when competing carriers have a need for such capacity. WorldCom is especially concerned about the willingness of BT to provide both undersea and backhaul facilities in the U.K. given MCI's blanket refusal to provide such facilities on the U.S. end of submarine cables.

Moreover, there should be transparency with respect to the prices, and the basis of the prices, charged by BT for IRUs, terrestrial backhaul, and cable maintenance and restoration. Further, the capacity, including terrestrial backhaul facilities, should be made available in units that reasonably accommodate new entrants' needs, whether on a 2 Megabit or a 45 Megabit basis. Absent such measures, many otherwise viable potential competitors may find the difficulty of obtaining cable capacity raises an insurmountable entry barrier.

b. Access to Digital Access Cross-Connect Switches

The Commission should also take steps to ensure that BT does not abuse its control over the facilities which translate optical signals coming off the undersea cable into signals compatible with carriers' backhaul facilities. While a carrier may own capacity on a submarine cable and perhaps even "backhaul" facilities to route traffic to a domestic network, it does not normally own such digital access cross-connect switches or "hand-off" facilities. These are normally managed or owned by a single entity -- in this case, BT.

In the *Merger Application*, BT and MCI state that "BT will make "hand-off" facilities available at the cable landing stations it manages to allow providers of alternative backhaul to access their international cable capacity." (Application at v.1, p. 20, n.30.) The parties do not indicate, however, that such "hand-off" facilities will be made available at reasonable and nondiscriminatory rates, terms, and conditions, or that the facilities will be activated in a time frame resembling that which would exist in a competitive market. WorldCom is concerned about the time it takes BT to provision DACS capacity. While WorldCom has been told that access to the DACS takes 12 months for unforecasted capacity and 6 months for forecasted capacity, WorldCom believes that such provisioning should take no more than 30 days. MCI has recognized that competition cannot flourish where a competitor's access to such bottleneck facilities are subject to the pricing or provisioning whims of a carrier with control over the facilities.[18] The FCC therefore should condition its approval of the merger to ensure that digital access cross-connect switches are provided to competing carriers in a nondiscriminatory, transparent, and cost-based manner.

c. Proposed Conditions to Ensure Reasonable and Non-discriminatory Access to Submarine Cable Capacity

Given BT's advantageous positions, the Commission should require BT to take the steps listed below to ensure that competitive providers of international services have the ability to obtain backhaul to their domestic network.

(1) Cable administration - availability, provisioning and pricing of IRUs

i. Require the implementation of policies promoting flexibility in the transfer of common reserve IRU capacity to accommodate the requirements of new international operators.

ii. Requests to purchase currently unused IRU capacity to be treated on a "first come, first served" basis, without consultation with either duopolists' network or retail businesses or reference to their own future capacity requirements.

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[18] *See, e.g., MCI Communications Corporation and Sprint Communications Company, L.P., Ex Parte Letter,* filed December 4, 1996; *MCI Telecommunications Corporation Ex Parte Letter,* CC Docket No. 79-252, filed April 12, 1996.

iii. 34/45 Mb/s capacity to be available to all, without any requirement to purchase full STM-1 capacity.

iv. IRU pricing and provisioning to be on a non-discriminatory basis in comparison to the charges paid by BT or MCI, with non-discriminatory best practice provisioning timescales achieved for all purchasers.

v. Capacity administered in all respects under the same terms and conditions for all IRU owners.

(2) Cable Restoration and Maintenance Facilities

i. Non-discriminatory cable restoration and maintenance arrangements.

(3) Backhaul Pricing and Availability

i. Backhaul to be offered at non-discriminatory "cost plus," wholesale charges, with the option of a lease or IRU purchase.

ii. Designated POPs must be provisioned with sufficient interconnect equipment to meet forecasted backhaul requirements.

iii. Provisioning timescales to be timely, and all conditions and quality of service to be on a non-discriminatory basis.

(4) *Collocation Facilities*

i. Actual or virtual collocation facilities to be offered on reasonable terms at cableheads, to enable competitive backhaul facilities to develop over time.

III. OTHER CONDITIONS

The Commission should impose additional prophylactic conditions upon its approval of the MCI acquisition. For example, the FCC should continue to apply fully its dominant carrier regulation on the combined BT/MCI, including the requirement that BT and MCI keep detailed records of provisioning and maintenance of capacity on international facilities. This requirement is necessary given BT's continued control over bottleneck submarine cable facilities. With respect to international operating agreements, the Commission should hold that the "no special concessions" clause that will apply to the combined BT/MCI entity requires that MCI accept no more than its proportionate share of return traffic on the U.S.-U.K. route.

IV. EFFECT OF SECTION 310(a)

Section 310(a) of the Communications Act prohibits the FCC from awarding a radio license to a foreign government or representative thereof.[19] The government of the United Kingdom currently holds an interest -- the so-called "golden share" -- in BT. That interest allows the U.K. government to prevent any one entity from owning 15% or more of BT's shares. Given the U.K. government's "golden share" in BT, the FCC is prohibited from allowing BT to assume control of MCI's radio licenses unless the U.K. government relinquishes its "golden share."

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[19] 47 U.S.C. §310(a).

V. CONCLUSION

For the foregoing reasons, WorldCom submits that the Commission's approval of the BT/MCI merger should be conditioned on the implementation of unbundling of BT's local loop and on BT's provision of reasonable and nondiscriminatory access to submarine cable capacity. Moreover, the FCC should regulate BT/MCI as a dominant carrier and impose other conditions necessary to prevent BT from leveraging its dominant carrier status in the U.K. into the U.S. international and long distance markets. The agency should also maintain continuing vigorous oversight of BT's willingness to act in a pro-competitive manner and not abuse its position as the dominant local service provider in the U.K. and owner of bottleneck submarine cable capacity.

Respectfully submitted,

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Dated: January 24, 1997

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